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In The
Supreme Court of the United States

THE SOUTH DAKOTA SECRETARY OF STATE AND THE SOUTH DAKOTA ATTORNEY GENERAL,

Petitioners,

v.

SOUTH DAKOTA FARM BUREAU, INC., et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE STATES OF MINNESOTA, MISSOURI, OKLAHOMA, AND THE COMMONWEALTH OF PUERTO RICO *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE* STATES

This *amici curiae* brief is submitted on behalf of the States of Minnesota, Missouri, Oklahoma, and the Commonwealth of Puerto Rico in support of the Petition for Writ of Certiorari brought by the South Dakota Secretary of State and the South Dakota Attorney General. In this case, the Eighth Circuit Court of Appeals held that the South Dakota anti-corporate farming law, known as Amendment E, which was adopted in 1998 by South Dakota voters as an amendment to their state constitution, violates the dormant Commerce Clause. Pet. App. 27. Specifically, the Eighth Circuit concluded that Amendment E was motivated by a discriminatory purpose and that Defendants had not satisfied their burden of showing that non-discriminatory alternatives would not advance the interests furthered by Amendment E. Pet. App. 25-27.

The *amici curiae* States and Commonwealth respectfully request this Court to grant the Petition for Writ of Certiorari because the Eighth Circuit's decision involves a question of significant importance to agricultural states, particularly those attempting to protect family farms and their rural communities. If allowed to stand, the Eighth Circuit's decision could have a detrimental impact on similar state laws[1] prohibiting corporate farming. Consequently, the *amici curiae* States and Commonwealth have

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[1] Currently, nine states, including South Dakota, prohibit corporate farming to some extent. *See* Iowa Code Ann. § 9H.4 (2003); Kan. Stat. Ann. § 17-5904 (1995 and Supp. 2002); Minn. Stat. § 500.24 (2002); Mo. Stat. Ann. § 350.015 (2001); Neb. Const. art. XII, § 8; N.D. Cent. Code § 10-06.1-02 (2003); Okla. Const. art. 22, § 2; S.D. Codified Laws § 47-9A-1 (2003); Wis. Stat. § 182.001 (2002).

a strong interest in ensuring that limitations on corporate farming are upheld.

SUMMARY OF ARGUMENT

State laws prohibiting corporate farming enjoy a long history of judicial and legislative recognition based on a state's important and legitimate interest in preventing the corporate takeover of farmland at the expense of independent family farms and the welfare of rural farming communities. *See, e.g., Asbury Hosp. v. Cass County*, 326 U.S. 207 (1945); *State ex rel. Webster v. Lehndorff Geneva, Inc.*, 744 S.W.2d 801 (Mo. 1988). In analyzing whether Amendment E violates the dormant Commerce Clause, the Eighth Circuit did not consider the strength of the state interests involved. Rather, relying solely on statements made by some of the drafters, the court held that Amendment E was enacted with a discriminatory purpose. Based on its finding that Amendment E discriminated against interstate commerce, the Eighth Circuit concluded that it was unconstitutional under the strict test set forth in *Hughes v. Oklahoma*, 441 U.S. 322 (1979).

Because Amendment E affects in-state corporations in the same manner as it affects out-of-state corporations, it cannot be held to discriminate against interstate commerce in the manner prohibited by the dormant Commerce Clause. *See CTS Corp. v. Dynamics Corp. of Amer.*, 481 U.S. 69, 87 (1987). Where a law, such as Amendment E, regulates even-handedly, its constitutionality under the dormant Commerce Clause is determined through application of the balancing test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). In holding that Amendment E

discriminates against interstate commerce and in failing to use the *Pike* balancing test to determine Amendment E's constitutionality, the Eighth Circuit's decision is in conflict with the established Commerce Clause jurisprudence of this Court. The Eighth Circuit's decision could open the door to similar challenges of other state anti-corporate farming laws, thus interfering with a state's ability to protect its rural communities and regulate the conduct of corporations within its borders. This potential impact is an important issue warranting granting the Petition for Writ of Certiorari in this matter.

ARGUMENT

I. Legitimate And Non-Discriminatory State Interests Support State Laws Prohibiting Corporate Farming.

Agricultural states have a long history of supporting family farms. For example, as early as 1973, the Minnesota Legislature adopted statutory provisions prohibiting corporate farming within the state of Minnesota. *See* 1973 Minn. L. ch. 427, § 1. The purpose of Minnesota's Corporate Farm Law is set forth in the preamble of the current statute:

> The [Minnesota] legislature finds that it is in the interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.

Minn. Stat. § 500.24 (2002).

Agricultural states have a very legitimate concern with the takeover of family farms by corporations, both large and small. The loss of family farms has a proven adverse effect on rural communities. Studies have shown that independent family farms contribute significantly more to healthier rural communities than do corporate farms. *See* Rick Welsh and Thomas A. Lyson, *Anti-Corporate Farming Laws, the "Goldschmidt Hypothesis," and Rural Community Welfare* (2002), at 11.[2] Particularly, research has indicated that as the number of independent family farms declines, the quality of rural life declines, available community services decrease, and the number of schools, churches, and other primary socializing institutions are reduced. *See* James B. Wadley, *Small Farms: The USDA, Rural Communities, and Urban Pressures*, 21 WASHBURN L. J. 478, 497 (1982). In addition, the number of cultural amenities such as parks and playgrounds, the number of independent business establishments, and the number of self-employment opportunities also decline. *Id.* A comparison of a family farm community with an agribusiness town led one expert to conclude:

> Whether we focus on economic, social, or political factors, the traditional virtues of our society are better served in the family farm community than in the agribusiness town. Incomes were on the average higher though more people were supported; business enterprises were both more numerous and more profitable; there were more social amenities such as parks, paved streets, and sewers; there were more schools, clubs, and

[2] A copy of this study is appended to this brief for the Court's convenience.

> churches; there were more local newspapers and formal institutions for local political decision-making. The crucial difference is that in the family farm community, most of the population was self-employed; in the other, two-thirds were agricultural workers.

Family Farm Antitrust Act of 1979: Hearings on S. 334 Before the Subcomm. on Antitrust, Monopoly, and Business Rights of the Senate Comm. on the Judiciary, 96th Cong., 1st Sess. 68 (1979) (statement of Walter Goldschmidt), *cited in, Id.* at 499-500.[3]

It is because of this impact on rural farming communities that several agricultural states have enacted laws limiting the role of corporate farming within their states. Such laws have been found to be within the purview of a state's regulatory power. *See, e.g., Hampton Feedlot, Inc. v. Nixon*, 249 F.3d 814, 820 (8th Cir. 2001) ("The Missouri legislature has the authority to determine the course of its farming economy. . . ."); *Lehndorff Geneva, Inc.*, 744 S.W.2d at 806 ("It is within the province of the legislature to enact a statute which regulates the balance of competitive economic forces in the field of agricultural production and commerce, thereby protecting the welfare of its citizens

[3] Additionally, recent experience in states allowing large corporate farming operations demonstrates that states have reason to be concerned with adverse environmental harm associated with such operations, including waste spills and water pollution. *See* Jan Stout, *The Missouri Anti-Corporate Farming Act: Reconciling the Interests of the Independent Farmer and the Corporate Farm*, 64 UMKC L. REV. 835, 848-50 (1996) (discussing the environmental harm experienced in Missouri and North Carolina resulting from large corporate hog farming operations).

comprising its traditional farming community. . . ."). Such laws have also consistently withstood challenges under the Equal Protection Clause, based on findings that such laws are rationally related to a state's legitimate interest in preventing corporate domination of farmland at the expense of independent family farms. *See, e.g., Asbury Hosp.*, 326 U.S. at 214 ("We cannot say that there are no differences between corporations generally and those falling into the excepted classes which may appropriately receive recognition in the legislative application of a state policy against the concentration of farming lands in corporate ownership."); *MSM Farms, Inc. v. Spire*, 927 F.2d 330, 333 (8th Cir. 1991) (agreeing that a policy seeking to retain and promote family farm operations and avoid the threats of unrestricted corporate ownership of farmland by preventing the concentration of farmland in non-family corporations is a legitimate state interest under the equal protection clause); *Lehndorff Geneva, Inc.*, 744 S.W.2d at 805 ("The statute is rationally related to a legitimate state interest in that it prevents the aggregation of farmland in large corporations to the competitive exclusion of traditional farming entities.").

Congress has also recognized the importance of preserving family farms. Codified in the Agriculture and Food Act is the congressional statement of policy supporting the maintenance of the family farm system of agriculture:

> Congress reaffirms the historical policy of the United States to foster and encourage the family farm system of agriculture in this country. Congress believes that the maintenance of the family farm system of agriculture is essential to the social well-being of the Nation and the competitive

> production of adequate supplies of food and fiber. *Congress further believes that any significant expansion of nonfamily owned large-scale corporate farming enterprises will be detrimental to the national welfare.*

7 U.S.C.A. § 2266(a) (1999) (emphasis added).

Anti-corporate farming laws are not only supported by a long history of judicial and legislative recognition as to their legitimate purposes, but also have had the effect of furthering those purposes. Specifically, the Welsh and Lyson study found that farming communities in states with anti-corporate farming laws have lower relative poverty levels, lower levels of unemployment, and higher percentages of farms reporting cash gains, than do farming communities in states without such laws. Welsh and Lyson, *supra*, at 11.

II. The Eighth Circuit's Commerce Clause Analysis Is Inconsistent With The Directives Of This Court.

The Commerce Clause, although phrased as an affirmative grant of regulatory power to Congress, "has long been understood to have a 'negative' aspect that denies States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 98 (1994). The analysis this Court undertakes to determine whether a state law violates this negative aspect of the Commerce Clause is well established. The first step is to determine whether the challenged law "'regulates evenhandedly with only 'incidental' effects on interstate commerce, or discriminates against interstate

commerce.'" *Id.* at 99 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)). If the law discriminates against interstate commerce, "it is virtually *per se* invalid." *Id.* On the other hand, a nondiscriminatory law that has only incidental effects on interstate commerce will be upheld unless "'the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

The Eighth Circuit incorrectly concluded that Amendment E discriminates against interstate commerce. Further, because of this erroneous conclusion, the court failed to consider whether any burden imposed on interstate commerce was incidental when compared to Amendment E's local benefits. The Eighth Circuit's decision, therefore, is contrary to the established Commerce Clause jurisprudence of this Court.

A. The Eighth Circuit's Analysis Of Whether Amendment E Discriminates Against Interstate Commerce Is Flawed.

In its analysis of whether Amendment E discriminates against interstate commerce, the Eighth Circuit focused primarily on statements made during the drafting process by some proponents to conclude that Amendment E had a discriminatory purpose.[4] Pet. App. 18-23. In doing so, the

[4] Further, while the *amici curiae* States and Commonwealth do not agree that the drafters of Amendment E had a discriminatory purpose, even if they did, a discriminatory purpose alone is insufficient to invalidate Amendment E. Rather, Amendment E must also have a discriminatory effect. *See, e.g., West Lynn Creamery, Inc. v. Healy*, 512

(Continued on following page)

court completely ignored the plain language of the Amendment. As the Supreme Court of Nebraska stated when considering a challenge to Nebraska's anti-corporate farming constitutional amendment:

> There is no meaningful way to determine the intent which motivates voters to sign a petition for the submission of an enactment, nor is there any real way to determine the intent of those voters who vote for the adoption of an enactment . . . we must consider the words of the initiative petition . . . and the words actually voted on and adopted by the voters. Any other approach would only be a selective choice, made by a reviewing court, of diametrically opposed allegations made by those favoring or opposing the enactment . . . it is impossible to divine the intent of myriad voters who adopt a constitutional amendment.

U.S. 186, 194 (1994) (finding discrimination based on a pricing order's "avowed purpose and its undisputed effect"); *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 394 (1994) (invalidating an ordinance based on its "practical effect and design"); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 273 (1984) (concluding that a liquor tax violated the Commerce Clause "because it had both the purpose and effect of discriminating in favor of local products"); *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 37, 42 (1980) (finding a statute discriminates based "both on its face and in actual effect," and noting that "[t]he principal focus of inquiry must be the practical operation of the statute, since the validity of state laws must be judged chiefly in terms of their probable effects."); *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 350-53 (1977) (finding discrimination based on the practical effect of the statute, and therefore not reaching the issue of whether it was intended to discriminate); *cf. Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471 n.15 (1981) (rejecting a discriminatory purpose argument based on a finding that the articulated purpose of the law was its actual purpose).

Omaha Nat'l Bank v. Spire, 389 N.W.2d 269, 279 (Neb. 1986) (citations omitted).

Simply put, Amendment E does not affect out-of-state corporations any differently than in-state corporations. Rather, Amendment E "'visits its effects equally upon both interstate and local business.'" *CTS Corp.*, 481 U.S. at 87 (citing *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 36 (1980)). As a result, it does not discriminate against interstate commerce. *See Id.* (finding that an Indiana statute imposing requirements on tender offers was nondiscriminatory because it had that same effects on tender offers whether or not the offeror was a domiciliary or resident of Indiana). *See also Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471-72 (1981) (concluding that a Minnesota statute prohibiting all milk retailers from selling milk in certain containers, "without regard to whether the milk, the containers, or the sellers are from outside the State" did not discriminate against interstate commerce).

While Amendment E admittedly has some burden on interstate commerce, it treats all business organizations alike regardless of their domicile. Pursuant to this Court's established Commerce Clause jurisprudence, Amendment E cannot, therefore, be found to discriminate against interstate commerce.

B. The Eighth Circuit Did Not Apply The Appropriate Test To Determine The Validity of Amendment E.

Based upon its finding of discrimination, the Eighth Circuit applied the strict test of *Hughes v. Oklahoma*, 441 U.S. 322 (1979), to determine the constitutionality of

Amendment E. Pet. App. 18. *Hughes* places the initial burden of proving that a challenged law is discriminatory on the party challenging its validity, 441 U.S. at 336. Once discrimination against interstate commerce is established, the burden shifts to the state to justify the law "'both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake.'" *Id.* (quoting *Hunt v. Washington Apple Adver. Comm'n*, 432 U.S. 333, 353 (1977)). This Court has deemed this test to be one of "strictest scrutiny." *Oregon Waste Sys., Inc.*, 511 U.S. at 101.

The Eighth Circuit's reliance on this test was misplaced. While Amendment E has an impact on interstate commerce, its application is even-handed, applying to both in-state and out-of-state corporations. As there is no discrimination in the Amendment's application, the appropriate test to be applied to determine the constitutionality of Amendment E is that set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). *Pike* instructs that:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

Id. at 143 (citation omitted).

Had the Eighth Circuit applied this *Pike* balancing test to Amendment E, the court would have had to consider the important and substantial state interests involved. In determining whether a state law imposes an excessive burden on interstate commerce, a court must consider that the Constitution "never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens," even if the law indirectly affects interstate commerce. *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 443 (1960). Rather, "[s]tate regulation, based on the police power, which does not discriminate against interstate commerce . . . may constitutionally stand." *Id.* at 448. Like the air pollution ordinance upheld in *Huron*, Amendment E is "a regulation of general application, designed to better the health and welfare of the community." *Id.* Amendment E, applicable to all corporations regardless of location, is designed to better the health and welfare of rural family farm communities by protecting residents from the social, economic, and environmental harms associated with the presence of large farming corporations.

The Eighth Circuit should also have considered "the significance for Commerce Clause analysis of the fact that state regulation of [corporations] is regulation of entities whose very existence and attributes are a product of state law." *CTS Corp.*, 481 U.S. at 89. State laws regulating corporations by prohibiting certain activities "necessarily affect aspects of interstate commerce." *Id.* at 90. The Eighth Circuit's failure to even consider this important factor will have a very detrimental impact on a state's ability to regulate the conduct of corporations conducting business within the state.

CONCLUSION

The Eighth Circuit's decision in this case is in conflict with the established dormant Commerce Clause jurisprudence of this Court. This is an issue of exceptional importance which warrants the granting of the Petition for Writ of Certiorari.

Respectfully submitted,

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Anti-Corporate Farming Laws, the "Goldschmidt Hypothesis" and Rural Community Welfare

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Executive Summary

A tremendous amount of attention and research has been devoted to the impacts of farm scale on rural communities. The majority of this research follows in the "Goldschmidt" tradition. Walter Goldschmidt is an anthropologist who in the 1940s made the finding that communities surrounded by large-scale farms faired

poorly, in a number of important social indicators, when compared to communities surrounded by small-to-moderate sized farms. Since Goldschmidt's research, a plethora of studies have been undertaken to attempt to replicate or refute his findings. The "follow-up" studies employ a diverse set of methodologies, data sets, units of analysis and variables. However, in general, the majority of the studies provide at least some support for Goldschmidt's original findings.

The impetus behind Goldschmidt's original research and subsequent studies is the effort to understand the nature and impacts of structural change in U.S. agriculture. Since early in the 20th century, U.S. agriculture has been increasingly characterized by a loss in farm numbers, increasing average farm size, increasing use of hired labor on farms, vertical integration of farming with off-farm businesses and upsurges in contract farming. These changes have been uneven across time and place, but in general have characterized the development of U.S. agriculture in the 20th and early 21st centuries, and have caused some observers to argue that agriculture is "industrializing".

In addition to generating academic research, concerns over structural change in U.S. agriculture have also generated public policies. For example, nine Midwestern states have adopted laws that restrict corporate involvement in agriculture. The nine states are Iowa, Kansas, Minnesota, Missouri, North Dakota, Oklahoma, South Dakota and Wisconsin. The laws were primarily put into place between 1974 and 1975 for all states but Nebraska. Nebraska's constitutional amendment (Initiative 300 or I-300) restricting corporate agriculture was adopted in 1982. The laws, called anti-corporate farming laws, vary from

state to state but in general are intended to hobble or restrict corporate involvement in agriculture in order to protect family farm agriculture.

Anti-corporate farming laws are not necessarily intended to slow down or stop many of the changes occurring in U.S. agriculture. For example, the laws do not address issues around hired labor or increasing scale of the farming units in general. Rather, the laws are designed to regulate or proscribe the entry of particular types of organizational forms based on ownership arrangements, most commonly non-family corporations, into production agriculture. This is accomplished through actions such as restrictions or regulations on ownership of farmland or downward vertical integration of livestock processing with production. It is often thought that unincorporated farming units might find it difficult to compete with incorporated farming units, because the latter enjoy liability advantages and possibly advantages in other areas such as acquiring financing and paying taxes. Our purpose in this study is to investigate what impacts, if any, these anti-corporate farming laws have had on rural communities.

We examine agriculture dependent counties, which we define based on two criteria: first, at least 75 percent of the total land in a county had to be in farms in 1982 and 1992; second, at least 50 percent of total gross receipts for goods and services in the county needed to originate from agricultural sales in 1982 and 1992. These measures were derived from the 1982 and 1992 Censuses of Agriculture and variables from the 1982 and 1992 Economic Censuses. There are 433 counties that fit these criteria. The states and counties included in the analysis are listed in the Appendix section at the end of this report.

To test the impacts of the anti-corporate farming laws we construct two variables: a binary variable for whether a state has such a law or not; and a restrictiveness index that allows us to compare states with more restrictive laws to those with less restrictive laws. In addition, a number of control variables are included in the analysis. The controls are used in order to attempt to isolate the effects of the variables of interest: in this case the anti-corporate farming variable impacts on rural community welfare. The control variables are those variables that might be considered as important determinants of rural community welfare and have to be included in order for an analysis to rigorously attempt to test for relationships of interest. Rural community welfare is measured by three variables: percent of families in poverty, percent unemployed and percentage of farms in a county realizing cash gains.

In addition, we use data from the 1982 and 1992 Censuses of Agriculture to construct a measure of large scale, absentee owned (industrial style) farming in a county. We label this measure the farm scale factor and include it in the analysis primarily as a control variable but also to inform the scholarship in the Goldschmidt tradition. However, our analysis of industrial farming or farm scale relative to rural community welfare differs from previous analyses since we test to determine if lower and higher levels of industrial farming, as measured by the farm scale factor, have differing impacts on rural community welfare.

The results of the analysis indicate that, in general, agriculture dependent counties in states with anti-corporate farming laws fared better (less families in poverty, lower unemployment and higher percentages of

farms realizing cash gains) than agriculture dependent counties in states without such laws. When we compare states with more restrictive anti-corporate laws to states with less restrictive laws, the results are similar, though much less consistent, to comparing states with laws to states without laws.

The results also suggest that rural communities tend to benefit from lower levels of agricultural industrialization but might fare poorly as agricultural industrialization intensifies and begins to dominate a county's agriculture. We conclude that diversity in agricultural structural forms at the county level appears to have positive impacts on rural communities as measured by poverty, unemployment and farm cash returns. Counties appear to require some agricultural industrialization to prosper but suffer when this type of agriculture crowds out less industrialized forms.

A public policy intervention that promotes organizational and structural diversity in agriculture would seem to be needed. In this vein, anti-corporate farming laws provide one model. These laws vary across states but in general have been designed to attempt a balance between allowing for economic flexibility of farm firms and protecting family-based agriculture. The laws are designed to allow farm firms to incorporate but only under certain restrictions and limitations. Some laws restrict the number of shareholders, other laws require that at least one owner also regularly work on the farm, and still others restrict the ability of certain types of corporations to feed livestock. There are of course other models for regulating industrial agriculture and for providing sheltering institutions for less industrialized forms. However, the relatively

extensive experience U.S. agriculture has had operating with such laws; and the fact that the laws appear to have had some of the beneficial impacts that their authors and proponents intended, make the laws interesting and thought provoking starting points for public policy development and debate concerning the realization of widespread and sustainable benefits from U.S. agriculture.

Introduction

A tremendous amount of attention and research has been devoted to the impacts of farm scale on rural communities. This subject has been a favorite of rural sociologists. The majority of the research follows in the "Goldschmidt" tradition. Walter Goldschmidt is an anthropologist who in the 1940s made the finding that communities surrounded by large-scale farms faired poorly, on a number of important social indicators, when compared to communities surrounded by small-to-moderate sized farms. Since Goldschmidt's research (1946/1978), a plethora of studies have been undertaken to attempt to replicate or refute his findings (Buttell, Larson and Gillespie, 1990; Lobao, 1990; Lyson, Torres and Welsh, 2001). The "follow-up" studies employ a diverse set of methodologies, data sets, units of analysis and variables. However, in general, the majority of the studies provide at least some support for Goldschmidt's original findings (Lobao, 1990; Lyson, Torres and Welsh, 2001).

The impetus for Goldschmidt's original research and the later studies is the effort to understand the nature and impacts of structural change in U.S. agriculture on rural communities. Since early in the 20th century, U.S. agriculture has been increasingly characterized by a loss in farm

numbers, increasing average farm scale, increases in the use of hired labor on farms, vertical integration of farming with off-farm businesses and upsurges in contract farming (Lobao, 1990). These changes have been uneven across time and place, but in general have characterized the development of U.S. agriculture in the 20th and early 21st centuries and have caused some observers to argue that agriculture is "industrializing" (Lobao, 1990; Welsh, 1996). The potential for industrial style farming to displace the traditional family-labor farm with other organizational forms, has caused public concern within and outside rural America.

In addition to generating academic research, concerns over structural change in U.S. agriculture have also generated public policies. For example, nine Midwestern states have adopted laws that restrict corporate involvement in agriculture. The nine states are Iowa, Kansas, Minnesota, Missouri, North Dakota, Oklahoma, South Dakota and Wisconsin (Pedersen and Meyer, 1995). The laws were put into place primarily between 1974 and 1975 for all states but Nebraska. Nebraska's constitutional amendment (Initiative 300 or I-300) restricting corporate agriculture was adopted in 1982. The laws, called anti-corporate farming laws, vary from state to state but in general are intended to hobble or restrict corporate involvement in agriculture in order to protect family farm agriculture (Powers, 1993; Welsh, Carpentier and Hubbell, 2001). For example, Minnesota's anti-corporate farming law specifically states that it is in the interests of the state to promote and protect:

> "the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and

> promote the stability and well-being of rural society in Minnesota and the nuclear family."

Anti-corporate farming laws are not necessarily intended to slow down or stop many of the changes occurring in U.S. agriculture. For example, the laws do not address issues around hired labor or increasing scale of the farming units in general. Rather, the laws are designed to regulate or proscribe the entry of particular types of organizational forms based on ownership arrangements, most commonly non-family corporations, into production agriculture. This is accomplished through actions such as restrictions or regulations on ownership of farmland or downward vertical integration of livestock processing with production (Welsh, 1998). The idea behind these policies is that unincorporated farming units might find it difficult to compete with incorporated farming units because the latter enjoy liability advantages and possibly advantages in other areas such as acquiring financing and paying taxes (Welsh, 1998).

Despite the plethora of research on industrialization of agriculture and its impact on rural communities, we could find no attempts to integrate data on public policy initiatives intended to blunt or regulate industrial agriculture into such research. Our purpose in this study is to begin to address this hole in the research in the Goldschmidt tradition. Specifically we intend to investigate whether anti-corporate farming laws have had positive or negative effects on rural communities. To accomplish this we first present a discussion of research in the Goldschmidt tradition, followed by a brief analysis of the structure and content of anti-corporate farming laws. Following this, we use data from the U.S. Census of Agriculture, the U.S. Census, and from a mail survey of

agricultural lawyers to discern if anti-corporate farming laws have had any impacts on rural communities in agriculture dependent counties; and if so, the nature of the impact.

The Goldschmidt Hypothesis

In the mid-to-late 1940s, a U.S. Senate Special Committee commissioned research to explore the potential relationship between the concentration of economic power at the community level and the social and economic well being of rural/farming residents and communities (Goldschmidt, 1946/1978; Lyson, Torres and Welsh, 2001). In his report to the U.S. Senate, *Small Business and the Community*, Walter Goldschmidt (1946) compared and contrasted "communities of large and small farms" in California; Arvin and Dinuba. According to Goldschmidt's description, Arvin was a community dominated by farms substantially larger than those found in Dinuba, the community surrounded by smaller farms. Goldschmidt argued that ". . . the differences between average farm size are great – in the neighborhood of 9 to 1 when taken on an acreage basis, 5 to 1 in value of products, and 3 to 1 if adjusted for intensity of operations. Nine-tenths of all farm land is operated in units of 160 acres or more in Arvin as against one fourth in Dinuba." However, Arvin and Dinuba were similar in other characteristics including population size, shared value systems and social customs and were " . . . part of a common system of agricultural production, best understood as industrialized" (Goldschmidt, 1978:393; see also Lyson, Torres and Welsh, 2001). Goldschmidt believed that a comparison of the relationship between the agricultural structure and the

community welfare of the two communities would be informative.

Goldschmidt concluded from his research findings that residents of Arvin realized a lower standard of living and quality of life than residents in Dinuba; a fact attributable to the difference in the agricultural structure surrounding the two communities. For example, he wrote that, "The reported differences in communities may properly be assigned confidently and overwhelmingly to the scale of farming factor" (Goldschmidt, 1978:284; Lyson, Torres and Welsh, 2001).

Lobao (1990:65) reviewed twenty-six studies that followed Goldschmidt. She found that " . . . about half of the twenty-six studies support Goldschmidt and another nine have mixed findings." Regarding the latter set of studies, some researchers have found that the Goldschmidt findings are supported in certain parts of the U.S., but not in other regions. For example, Lobao (1990:58) reports that in California, Texas, Arizona, Florida, other parts of the West, and the Great Plains, research tends to find support for Goldschmidt. However, in the South, Northeast and the Corn Belt research is less likely to support Goldschmidt. In addition, Lobao (1990) goes on to argue that further research in the Goldschmidt tradition should include a longitudinal (over time) component in addition to cross-sectional analysis, and account for the degree of agricultural dependency of a county or community. Outcomes for agriculture dependent counties are more likely to be linked to surrounding farm structure than non-dependent counties.

Anti-Corporate Farming Laws

Anti-corporate farming laws primarily restrict corporations and other investment type organizations from engaging in farming. The restrictions are generally applied to non-family corporations and limited partnerships (Pedersen and Meyer, 1995). Family corporations are often exempted from the laws if they have certain characteristics. These characteristics might include a maximum number of unrelated (non-kin) shareholders or at least one shareholder living and working on the farm (Pedersen and Meyer, 1995). Additionally, family farm corporations might have to earn a minimum percentage of their gross income from farming in order to be permitted to engage in farming (Welsh, 1998). If a farm is the type of corporation that is not proscribed, or not a scrutinized entity (e.g., general partnership, sole proprietorship), then there are no restrictions placed on the farm (Pedersen and Meyer, 1995). Also, it is important to note that Pedersen and Meyer (1995:45) found that anti-corporate farming laws often exempt certain types of commodities. In their words: "The vertically integrated poultry sector may be tolerated, while the same state may ban the vertically integrated hog industry." This latter finding is probably due to the fact that the poultry industry had vertically integrated prior to the establishment of the laws. It might have been considered overreaching, impractical or counter productive to impose corporate restrictions on poultry given its structure in the 1970s.

If a business is not authorized then a number of restrictions can apply. For example, there may be restrictions on the amount of farmland that can be owned (Dahl, 1991). In addition, other activities could be restricted under the laws. For example, Iowa's anti-corporate

farming law bans packer feeding of livestock (Hamilton, 1995). Generally the laws limit the flexibility of corporations to vertically integrate and expand operations. The intent of the laws is to hobble or discourage the development of a non-family based corporate agriculture and to retain an agricultural industry that is dominated by family owned and operated production units.

Over time there have been some efforts to relax or rescind the laws (see Hamilton, 1995; Pedersen and Meyer, 1995; Powers, 1993). Structural change in U.S. agriculture, especially livestock agriculture, toward a larger-scale vertically coordinated form has brought with it pressure to allow greater flexibility for agribusiness firms in Midwestern states to move toward the poultry model of vertical integration (Thu and Durrenburger, 1998). Efforts to convince state legislatures, or the citizens, of states with anti-corporate farming laws to relax the laws have often been met with resistance by individuals and groups (Welsh, 1998). Because of these conflicting interests and desires, the outcome of efforts to either relax the laws or strengthen them has been mixed. In 1991, Oklahoma "clarified" its laws to allow corporations to have more flexibility. Missouri exempted three counties from its law in 1993 and Kansas allowed for county exemptions to its law beginning in 1995. On the other hand, South Dakota strengthened its law in 1988 (Hamilton, 1995) and again in 1998 through popular referendum (WORC, 1998). Welsh, Carpentier and Hubbell (2001) have demonstrated that making changes in the laws can influence outcomes such as changes in the percentage of acres owned by non-family farm corporations.

What is apparent from the various efforts to change the laws is that those parties in favor of, and opposed to,

corporate involvement in agriculture believe the laws have some relevant impacts. Otherwise it would not be rational action to either oppose or support the laws. In addition, it is clear from the complexity of the laws and the detail in which those entities to be regulated or proscribed are characterized, that the laws are constructed carefully with a great degree of purpose. Incorporation is allowed but only under certain conditions. Likewise, absentee ownership is permitted but limited. The architects of the laws have attempted to allow economic flexibility on the part of firms to grow and expand, but to limit the degree to which production agriculture departs from the family-farm model (Welsh, 1998).

Materials and Methods

We examine agriculture dependent counties (cf Cook and Mizer, 1995) which we define based on two criteria: first, at least 75 percent of the total land in a county had to be in farms in 1982 and 1992; second, at least 50 percent of total gross receipts for goods and services in the county needed to originate from agricultural sales in 1982 and 1992. These measures were derived from the 1982 and 1992 Censuses of Agriculture and variables from the 1982 and 1992 Economic Censuses.[1] There are 433 counties that fit these criteria (see Lyson, Torres, and Welsh, 2001). The states and counties included in the analysis are listed in the Appendix section at the end of this manuscript. Of the 433 counties, 292 are in states with anti-corporate farming laws.

In addition, we use data from the 1982 and 1992 Censuses of Agriculture to construct a measure of large scale, absentee owned farming in a county. For 1982, we

combine the following three variables: 1) the percentage of agricultural sales in a county accounted for by farms with sales of $500,000 or more; 2) the percentage of farm operators in a county that reside off-farm; and 3) the percentage of tenant farms in a county. A principal components analysis shows that the three variables together form one factor that accounts for over 50 percent of the variance, with an eigenvalue of 1.51. Eigenvalues of greater than 1.0 indicate that a factor is statistically significant (Table 1).

For the 1992 cross-sectional analysis, we use the same three variables, but add a fourth variable (not available in the 1982 Census of Agriculture) that taps the percentage of hired farm labor (of all hired farm labor) on the largest farms in the county. This variable adds a labor intensity component to the factor scale. This factor accounts for 52.35 percent of the variance and has an eigenvalue of 2.1. For both scales, a high factor score is associated with counties characterized by large-scale, industrial-like farm operations, while a low factor score is associated with counties in which smaller-scale, family-type farms predominate (Lyson, Torres and Welsh, 2001). We chose these variables in order to construct an index that reflects the rhetoric of family farm advocates. That is, individuals and groups that are likely to favor anti-corporate farming laws and family-based agriculture, are also likely to hold Jeffersonian ideals regarding the primacy of small-to-moderate sized family *owned and operated* farms (see Hamilton, 1996; Welsh, 1998).

In our analyses we use a quadratic form of this variable. We include the factor score (labeled as "farm scale") and then we include the square of the factor score (labeled

as "farm scale[2]"). A quadratic tests for potential differential impacts of higher and lower values of a variable. In our case we will test whether high levels of agricultural industrialization have a different impact on rural community welfare than lower levels.

To probe for differences between large-farm and small-farm communities, Goldschmidt identified a variety of measures of socioeconomic welfare including income distribution, housing conditions, and a general level of living index. To measure rural community welfare we use two frequently employed measures that reflect aspects of community economic health (Horn, 1993; OECD, 1997), and a third variable that measures overall farm economic performance in a county. The community economic health measures are for (circa) 1980 and (circa) 1990 and come from machine-readable data files, CO-STAT 4 (U.S. Bureau of the Census, 1992). The two measures are 1) percent of families in poverty; and, 2) unemployment rate (three year average).[2] The farm economic performance variable is the percentage of farms reporting cash gains in the county, and is derived from the Census of Agriculture for 1992 (see Lyson, Torres and Welsh, 2001).

Our analysis differs from Goldschmidt's in a number of important ways. For example, he reported differences in mean percentages or absolute levels in order to discern the impacts of farm scale on community welfare. However, we attempt to parallel Lobao (1990) and use both cross-sectional and lagged panel linear regression analyses (Ordinary Least Squares[3]) to investigate whether anti-corporate farming laws are associated with community welfare (see Lyson, Torres and Welsh, 2001). The cross-sectional analyses regresses the set of community welfare variables circa 1990 on a measure of farm scale derived

from the 1992 Census of Agriculture, anti-corporate farming law variables and important control variables taken from the Census of Agriculture and the U.S. Census.

In a lagged panel design, independent variables are measured at points earlier in time than the dependent measures. Additionally, lagged panel models also include dependent variables measured at earlier points in time as explanatory variables. The inclusion of a lagged panel design in conjunction with a cross-sectional analysis is more rigorous than cross-sectional analysis alone, since lagged panel analysis provides an assessment of the effects of farm scale and anti-corporate farming laws on *changes* in community welfare over time. In the lagged panel analyses, we use dependent variables from the 1990 cross-sectional analyses and regress them on independent measures circa 1980 (see Lyson, Torres and Welsh, 2001).

To assess the impact of the anti-corporate farming laws we construct two variables: 1) a binary variable for whether a county is within a state with an anti-corporate farming law (1 = anti-corporate state; 0 = otherwise); and 2) a restrictiveness index that rates the overall restrictiveness of a state's law. To construct the restrictiveness index we surveyed agricultural lawyers deemed by their peers as experts on anti-corporate farming laws. To obtain the names of the agricultural lawyers, we initially identified knowledgeable informants and queried them as to a list of experts. Each of these experts were subsequently contacted and asked for a list of experts. This iterative process continued until a "core" group of 19 experts were identified. This type of purposive sampling is a common qualitative research methodology. It is useful for identifying and gathering data from small groups of people with

specialized knowledge, experiences or insight (Patton, 1990). Nineteen surveys were mailed and 15 complete and usable surveys were returned. The surveyed lawyers worked in private practice, academia and non-governmental organizations interested in agricultural policy. Respondents rated the laws from 1 to 5 for each year the laws were in effect from 1974 to 1997. This time period was chosen to coincide with the establishment of the laws (all laws were in place by 1975 except for Nebraska's in 1982). Lower ratings indicate less restrictiveness. The results are the weighted averages of the respondents' ratings for each state (see Welsh, Carpentier and Hubbell, 2001). Restrictiveness ratings corresponding to Census of Agriculture years (1982 and 1992) were included as explanatory variables.

The results of the survey are reported in Table 1. The agricultural lawyers rated most of the laws as mildly to fairly restrictive. No laws were rated as very restrictive, and two of nine state laws were rated as at least fairly restrictive over the life of their laws: Nebraska and North Dakota. In addition, Table 1 indicates that over time the perceived restrictiveness of the laws in general has declined slightly and there has been increasing variation between state laws. For example, the restrictiveness ratings of Missouri, Oklahoma and Kansas declined to reflect changes made by the state legislatures. Specifically, Oklahoma's "clarification" of its law to attract corporate investment resulted in its rating dropping from 2.7 to 1.8 from 1990 to 1991. Contrariwise, South Dakota strengthened its law in 1988, which was also reflected by an increase in the average rating from 1987 to 1988: 2.7 to 3.0 (see Welsh, Carpentier and Hubbell, 2001).

The analysis is divided into two steps. We initially consider the full data set and include only the binary anti-corporate farming law variable. We then analyze only those counties within anti-corporate states and include the restrictiveness rating variable in place of the binary variable. The initial analysis assesses the effect of the presence of a state anti-corporate farming law. The second step compares the effect of the relative restrictiveness of the state laws.

In addition, a number of control variables are included to account for other possible factors influencing the community welfare variables. The control variables included in the analysis are:

- Percent college educated
- Median family income
- County population
- Natural log of percent of population that are Native Americans
- Natural log of percent of population that are Black Americans
- Percent of state workforce that is unionized
- County level control for agricultural region.

The natural logarithms of several independent variables are calculated to correct for skewness in the data. Control variables are included in an attempt to isolate the effects of the variable of interest: in this case the anti-corporate law variables on community welfare. In this case, controls were included that would likely be seen as potentially influencing poverty and unemployment rates at the county level, as well as percent of farms earning cash gains. For

example, it is often found that Native and Black American populations endure higher poverty rates and higher unemployment rates than other groups. Therefore, controlling on these variables adds confidence that the impact of the laws has been measured and not other influences that might be contained within states with anti-corporate farming laws.

Regarding agricultural region, the Economic Research Service of the U.S. Department of Agriculture has developed county-level region variables. These regional variables have been developed to identify " . . . areas with similar types of farms intersected with areas of similar physiographic, soil, and climatic traits, as reflected in USDA's Land Resource Regions" (ERS). We control on two regions: 1) "Heartland" region that primarily entails the Corn Belt; and, 2) "Prairie Gateway" region that primarily entails Texas, Oklahoma and Nebraska. Controlling on agricultural region is necessary for studies that investigate outcomes related to agricultural structure.

Results

The results for the full data set (all states) are presented in Table 4 (family poverty dependent variable), Table 5 (percent unemployed dependent variable), and Table 6 (percent of farms reporting cash gains dependent variable). The results for the subset of states (anti-corporate states) are presented in Tables 7, 8 and 9. Because all states except Nebraska had the laws enacted by 1975, (Nebraska's was not adopted until 1982), we place greater weight on the cross-section results when comparing differences between the restrictiveness of the states' laws. By 1982 it is unlikely that sufficient time had

passed for the differences between the laws to result in different outcomes for agriculture dependent communities in states with anti-corporate farming laws. However, the results for all analyses are included in the tables.

Turning first to the full analysis, for family poverty, the anti-corporate state binary variable is negative and significant in the cross section and lagged panel analyses. This indicates that farming dependent counties in states with anti-corporate farming laws have lower relative poverty levels than farming dependent counties in states that do not have anti-corporate farming laws. A similar result is obtained for unemployment in both the cross-section and lagged panel analyses. Anti-corporate states are associated with lower levels of unemployment at the county-level. For the percent of farms reporting cash gains, the anti-corporate states are associated with higher percentages of farms reporting cash gains at the county-level.

Considering the impacts of the "farm scale" (lower levels of industrialization) and "farm scale^{2}" (higher levels of industrialization) variables, the results are mixed. The "farm scale" variable is positively associated with higher unemployment and percent of farms reporting cash gains in the lagged panel analysis. The "farm scale^{2}" variable is positively associated with higher levels of family poverty and higher unemployment in the cross sectional analyses.

For the analysis among the subset of states with anti-corporate farming laws, the restrictiveness index has no effect on poverty in the cross-section analysis, and a slight positive association with poverty in the lag panel analysis. The index also has a strong negative association with unemployment and a positive association with percent of

farms reporting cash gains in the cross section analysis. That is, agriculture dependent counties in states with stricter anti-corporate farming laws are likely to have lower unemployment and a higher percentage of farms that reported cash gains than agriculture dependent counties in states with less strict laws. We find no relationship between restrictiveness and percent unemployed and percent farms reporting cash gains in the lag panel analysis.

Turning to the scale of farm variables, we find a negative relationship between "farm scale" and poverty and unemployment and a positive relationship with percent of farms earning cash gains. The "farm scale^{2}" variable is positively associated with poverty and unemployment and percent of farms reporting cash gains.

Discussion and Conclusions

In general, the results indicate that some economic flexibility regarding the components of industrial agriculture are beneficial to agriculture dependent rural communities. However, there appears to be a ceiling on the beneficial effects of agricultural industrialization, and beyond a certain level, the impact turns negative. The results suggest that diversity in agriculture structure could be a vehicle for sustaining agriculture dependent communities.

Regarding the role of anti-corporate farming laws, we find that the laws are likely to have been beneficial to rural communities. Agriculture dependent counties in states that restrict or regulate corporate agriculture are more likely to score higher on the measures of community well being than states without such laws. Also, when

comparing anti-corporate farming states to each other, stricter laws are, for the most part, likely to either have had no impact or positive impacts on the socio-economic welfare of agriculture dependent counties.

The farm scale and anti-corporate law results provide similar messages regarding farm structure and rural community welfare. Both indicate that economic flexibility regarding aspects of agricultural industrialization is needed to promote healthy rural communities. However, there is also a need to limit the degree to which industrialization and the corporate penetration of agriculture occurs. The key question raised by our analysis is to what degree should public policy attempt to promote family-based agriculture *and* allow for firm flexibility in the direction of corporate organization in order to maximize community benefits? In this vein, anti-corporate farming laws provide one model since they have been designed to balance economic flexibility of farm firms with the protection of family-based agriculture. There are of course other models for regulating industrial agriculture, and for providing sheltering institutions for less industrialized forms of agricultural production (Castle, 1998). However, the relatively extensive experience U.S. agriculture has had operating with such laws; and the fact that the laws appear to have had the beneficial impacts that their authors and proponents intended, make the laws interesting and thought provoking starting points for public policy development and debate concerning the realization of widespread and sustainable benefits from U.S. agriculture.

Another important question to be answered with future data is the impact changes in the laws have had on the community health indicators we investigated. Our

analysis is historical in that we have only been able to consider data from circa 1980 and circa 1990. Through the nineties the laws have been altered and later Census data should reveal the impacts of those changes.

Notes

1. The U.S. Department of Agriculture has constructed a typology of U.S. counties in which "farming dependent" is one type. The USDA defines farming dependent counties as nonmetropolitan counties in which farming contributed a weighted annual average of 20 percent or more of total labor force and population income over the three years from 1987 to 1989. Because farm-related incomes are generally low, we felt a better measure of agricultural dependency should focus more on the economic and geographic scope of the farming enterprise and not on the income farming generates.

2. The three-year averages for this and subsequent variables are for 1991, 1992, and 1993 for the cross sectional and lagged panel dependent variables and for 1981, 1982, and 1983 for the lagged panel regressors.

3. For analyses of data with two-levels (in this case county and state levels), Ordinary Least Squares can have certain limitations. An alternative approach is to use Hierarchical Linear Modeling (HLM) techniques (see Bryk and Raudenbush, 1992). However, the power of HLM techniques may be limited for data sets with less than thirty groups with thirty observations in each group (in this case counties within states) (see Hofmann, Griffin and Gavin, 2000). Our data set consists of about 20 states with a wide variation in county

numbers (some with as few as one county per state). We opted to report OLS results, however, for those states with at least 10 counties we performed cross-section HLM analyses as a check on our OLS results. The HLM results indicated that on average, and net of controls, agriculture dependent counties in states with anti-corporate farming laws had lower poverty rates and unemployment and higher percentages of farms earning cash gains.

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